by the death of the drawer if presented within ten days of its date. Mr. Crawford, in his annotated edition of the New York Negotiable Instruments Law, p. 114, mentions that a similar provision was suggested for that statute, but was rejected. By § 321 a check is a bill of exchange except as otherwise provided, but it has not been decided whether this brings it within the doctrine of *Cutts* v. *Perkins*, *supra*. The fact that the bank is always safe in refusing payment after the death of the drawer, except in jurisdictions where the holder is allowed to sue, explains the absence of authority. The question still remains, both in the United States and in England, what would be necessary to charge the bank with notice of the drawer's death. In the recent Kentucky case the administrator himself gave notice.

THE JURISDICTION OF EQUITY IN CASES OF LIBEL.—Since an early date courts of equity have refused to take jurisdiction of cases of libel. *Huggonson's Case* (1742) 2 Atk. 469. The reason is that if the publication were enjoined the freedom of the press would be invaded. The doctrine has been followed in the English courts, with the exception of three cases: *Springhead Spinning Co.* v. *Riley* (1868) L. R. 6 Eq. 551; *Dixon* v. *Holden* (1869) L. R. 7 Eq. 488; *Rollins* v. *Hinks* (1872) L. R. 13 Eq. 355, decided by MALINS, V. C.; and these Lord CAIRNS, C., overruled in *Prudential Insurance Co.* v. *Knott* (1875) L. R. 10 Ch. App. 142. In 1839, in the case of *Brandreth* v. *Lance*, 8 Paige Ch. 24, Chancellor WALWORTH followed the English rule; and it has since that time been generally recognized in New York and elsewhere. 1 COLUMBIA LAW REVIEW, 198.

The recent case of *Marlin Fire Arms Co.* v. *Shields* (1902) 74 N. Y. Supp. 84, decided by the Appellate Division of the Supreme Court, First Department, is of interest, as seemingly breaking in upon this doctrine. The plaintiff had advertised in the defendant's magazine for a number of years. The defendant having raised his price to what was alleged to be an exorbitant rate, the plaintiff refused to advertise further. Thereupon the defendant, in order to compel the plaintiff to advertise, published in the columns of his magazine what purported to be letters written by sportsmen, charging falsely that there were mechanical defects in the plaintiff's rifles. These letters were in fact written by the defendant himself. The Special Term sustained the defendant's demurrer on the ground of lack of jurisdiction. This judgment is now reversed, one Justice dissenting. Mr. Justice HATCH, writing the opinion, argues that equity has jurisdiction because here there is an irreparable injury to the property rights of the plaintiff, such that an action at law will not give adequate relief. Even if HATCH, J., by this holding intended to recognize business reputation as property in the legal sense, there is here no actual, unlawful user of those rights by the defendant. It is only where a defendant makes an unlawful use of the plaintiff's property that equity will enjoin a libel, and then only by way of incidental relief. *Gee* v. *Pritchard*

(1818) 2 Swanst. 402; *Pollard* v. *Photographic Co.* (1888) 40 Ch. 345. These two cases are not cited in the opinion, but great reliance is placed on *Ermack* v. *Kane* (C. C. Ill. 1888) 34 Fed. 46; *Casey* v. *Typographical Union No. 3* (C. C. Ohio, 1891) 45 Fed. 135; *Vegelahn* v. *Guntner* (1896) 167 Mass. 92; *Beck* v. *Railway Teamsters' Union* (1898) 118 Mich. 497.

These cases may be divided into two classes: (*a*) Cases affecting patent rights and (*b*), those dealing with boycotts and strikes. *Ermack* v. *Kane, supra,* is a good example of class (*a*). The defendant, alleging that the plaintiff was infringing his patent sent out circulars to the plaintiff's customers threatening to sue them for damages, thus injuring the plaintiff in his business. An injunction was granted. The case was followed in *Lewin* v. *Welsbach Light Co.* (C. C. Pa. 1897) 81 Fed. 904, in which the facts were the same as in the *Ermack* case. The court added, however, that if this were a "mere libel" there could be no relief. It is not easy to determine just what was meant by a "mere libel," unless the court rested its decision on the ground that the defendant was making use of the plaintiff's patent, an idea which is clearly erroneous. In *Boston Diatite Co.* v. *Florence Mfg. Co.* (1873) 114 Mass. 69, a case on all fours with *Ermack* v. *Kane, supra,* and *Lewin* v. *Welsbach Co., supra,* GRAY, C. J., after showing that equity had no jurisdiction in cases of libel, said, "The present bill alleges no trust or contract between the parties, and no use by the defendants of plaintiff's name, but only that the defendants made false and fraudulent representations, oral and written, that the articles manufactured by the plaintiff were infringements of letters patent of the defendant corporation and that the plaintiff has been sued by the defendant corporation therefor; and that the defendants further threatened divers persons with suits for selling the plaintiff's goods, upon false and fraudulent pretence that they infringed upon the patent of the defendant corporation. If the plaintiff has any remedy it is by action at law." It would seem, therefore, that these were "mere libels," and that *Francis* v. *Flinn,* 118 U. S. 385, decided by the Supreme Court in 1886, should have been followed, and the injunctions refused.

In class (*b*), of which *Casey* v. *Typographical Union No. 3, supra,* and *Beck* v. *Teamsters' Union, supra,* are the best examples, the court is asked to give relief in boycotts and strikes. The injunction is usually sought to restrain picketing, and the courts take jurisdiction because actual physical violence and irreparable injury are threatened. Incidentally, in a few of these cases, the courts have also enjoined the issuing of "boycott circulars," though this has not met with approval. See the dissenting opinion of HOLMES, J., in *Vegelahn* v. *Guntner, supra.* The principal case cannot be brought under either of the above mentioned classes.

In England at the present day, by *statute,* courts of equity have been given jurisdiction in such cases as the present. HATCH, J., regards this as an argument in favor of the decision, because it shows the trend of public opinion. But as he points out that the law of

New York as to libel is governed by *Brandreth* v. *Lance, supra,* which rests squarely on prior English decisions, it would seem that a statute would, in this State also, be necessary in order to give jurisdiction. Reluctantly, therefore, the conclusion must be reached that, though the plaintiff could have obtained adequate relief in no other way, the court should have refused to take jurisdiction in the principal case.